

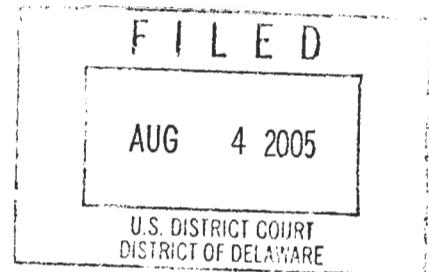
United States District Court  
District of Delaware

Kevin C. Brathwaite,  
Plaintiff

v.

C.A. NO. 04-1542-GMS

Thomas Carroll, et al.,  
Defendants



Plaintiffs Response to Defendants  
Motion to DISMISS

AS A response, This Plaintiff offers the following:

1. This Plaintiff has satisfied the requirements to attempt to exhaust his administrative remedies, by filing grievances to address the issues that has violated his Constitutional rights and caused him harm.

2. All of the grievances filed by the Plaintiff, were returned by the grievance officer, defendant, Lise Merson, and refused to be accepted for fictitious reasons. See attached grievances. (Both sides) which proves that the grievance system at the Facility is a complete farce.
3. The grievance that was filed in regards to the assault that took place on October, 9<sup>th</sup>, 2004 - grievance CASE #8303 was forwarded to Major Holman for a follow up. See, the top portion of the grievance. Major Holman did absolutely nothing to investigate the incident.
4. The administrators of the Facility are responsible for the care and custody of all inmates. And Warden Carroll, Deputy Warden Burris and Deputy Warden

Pierce were notified by this Plaintiff and two Area Lieutenants, as to the assaults that took place upon the Plaintiff. And they chose to ignore the problem.

5. After the first assault, this Plaintiff was denied medical attention, and did not get any medical attention until he attempted to hang himself and was taken to the infirmary. At which time his injuries were finally documented sixteen hours after the assault. See attached medical report.
6. The shift commanders and administrators were notified by the infirmary nurse that the Plaintiff's injuries needed to be photographed and the nurses request was ignored. The Plaintiff also filed a grievance to request that his injuries be photographed and

he Notified All Area Lieutenants. AND ALL OF his request to be photographed Were ignored.

7. By refusing to acknowledge the Constitutional violations claimed by the Plaintiff, these Administrators Should be held accountable because these situations Went on for the entire Four and a half months that this Plaintiff stayed in the infirmary.
8. These Administrators Were Well aware of the injuries that were inflicted upon this Plaintiff, and to date, this Plaintiff still has been denied dental treatment.
9. These Administrators told the law library clerks AND paralegals that they were not to speak to or have any contact or other communication with the Plaintiff.

The infirmary log book that was used to document the Plaintiffs activity will confirm this fact and other constitutional violations against this Plaintiff.

10. Specifically, in a 42. U.S.C. -1983 action, the court should deny the defendants Motion to dismiss, if the Plaintiffs complaints sufficiently alleges a deprivation of ANY rights Secured under the Constitution.  
See, Holder v. Allentown, 987 F.2d 188, 194 (3<sup>rd</sup> cir. 1993)

11. The court must accept the factual allegations as true.  
See, Graves v. Lowery, 117 F.3d 723, 726, (3<sup>rd</sup> cir. 1997)

12. IF the Plaintiff is ~~not~~ Pro Se, the court must interpret their allegations liberally, and must hold their complaint to "less" stringent

Standards than formal pleadings  
drafted by lawyers"  
See, *Estelle v. Gamble*, 429 U.S.  
97, 106 (1976)  
*Zilch v. Lucht*, 981, F.2d 694  
(3<sup>rd</sup> Cir. 1992)

13. All of the defendants named in the Amended Complaint were all directly involved in the incidents that violated this plaintiff's Constitutional rights from December, 15<sup>th</sup>, 2004 thru February, 24<sup>th</sup>, 2005.
14. All of the factual allegations made in the complaint can be proven through tangible evidence and witness testimony if this case is allowed to proceed to trial.

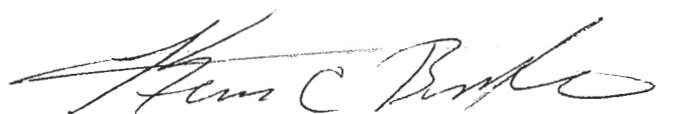
Wherefore, For the foregoing reasons, this Plaintiff request this court to deny the defendants Motion to dismiss.

  
Kevin C. Brathwaite  
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1181 Paddock Rd  
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19977

## Certificate of Mailing

I Kevin C. Brathwaite, states  
that I have caused one copy  
of the enclosed "Response to  
Defendants Motion to Dismiss"  
to be mailed to the following  
party by way of the United  
States postal Service.

Ophelia M. Waters, I.D. #3879  
Deputy Attorney General  
820 N. French St. 6<sup>th</sup> Floor  
Wilmington De  
19801

  
Kevin C. Brathwaite  
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Date July, 25, 2005

IM Kevin Smith  
SBI# 315294 UNIT

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977

U.S.M.S.  
X-RAY



Peter Dalleo, Clerk  
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844 N. KING ST  
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19801 - 3570

Legal  
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